



SOUTHERN COALITION
for SOCIAL JUSTICE



VIA EMAIL

April 30, 2019

To: North Carolina State Board of Elections
From: Democracy North Carolina
Southern Coalition for Social Justice
Re: Comment to Voting Precinct Boundary Redraw

Dear State Board of Elections:

On behalf of Democracy North Carolina and the Southern Coalition for Social Justice, we write today to express our deep concern with the precinct boundary redraw process that is currently being undertaken by the State Board of Elections ("the Board"). In our conversations with Board staff, we have sought to reassure ourselves and our community partners that these changes would be minimal, but we are unconvinced. A plan that radically redraws precincts across the state on the eve of the March 3, 2020 Primary, will predictably result in voter confusion and add to the difficulty of administering the 2020 elections, potentially disenfranchising tens of thousands of North Carolina voters. We urge the Board to reconsider the timing of this planned redraw; such delay we believe is compliant with state law and a more prudent use of election administration resources. And while we know that the Executive Director has communicated to the county boards of election that there may be a "legislative fix" in the works, neither we nor the counties are aware of the details of any such fix, and the potential of a legislative fix must take into account the issues we raise below.

Background

In 2016, the General Assembly passed Senate Bill 667, S.L. 2016-109, ("SB 667") directing the state's participation in the Census Bureau's 2020 Census Redistricting Data Program so that the state will receive 2020 Census Data by voting districts ("VTDs"), in addition to receiving the data by census blocks, as has been the historical norm. SB 667 laid out a four phase process for the State Board to conduct a systematic review and input of voting districts and voting precincts.

As part of the first phase of this process, the Board was to develop a proposed voting district map by September 1, 2016 that took into consideration three main criteria: (1) reasonable size limitations of the proposed voting district, including total population and total registered voters; (2) the alignment of proposed boundaries with visible features, such as roads and bodies of water; and (3) potential election administration efficiencies if the proposed voting districts were used as voting precinct boundaries in an election, to include potential polling places within the proposed voting district, the distance to the potential polling places for the voters to travel on election day, and the number of voters for voting in person. 2016 N.C. Sess. Laws 109, s. 7.(c). The statute

dictates that this phase (referred to herein as the “voting district redraw process”) should be completed by December 31, 2016. This deadline has long passed and this phase has still not been completed.

During the second phase of effectuating the statute, the Board was to notify county boards of elections that *the county boards* must submit by November 1, 2017 any proposed changes to precinct boundaries to be used in elections held on or after January 1, 2018. To assist with this phase, the Board was to develop a set of criteria for the county boards of elections to use in proposing precinct boundaries and facilitate the county boards in developing the proposed boundary changes. *Id.* at s. 7.(d). This phase will hereto be referred to as the “precinct boundary alteration phase.” This deadline has long passed and this phase has still not been completed.

Our understanding is that the first and second phases, when read in conjunction and done on the timeline mandated by the statute, would provide the counties with relevant data and ample time to examine the Board’s suggested precinct changes, conduct a county board-driven review process that includes public input, and decide which of the suggested changes to adopt.

In the third phase, the Board was to “consult with the Legislative Services Office about the proposed changes to precinct boundaries in a timely and systematic manner in order to accommodate submitting a statewide map of update precinct boundaries to the Bureau of the Census for the Phase 2 Voting District Project.” *Id.* According to guidance from the Census Bureau, the boundaries submitted to the Bureau must align with census geography. The deadline for submitting voting districts to the Census Bureau is May 31, 2019. Following receipt of the final 2020 census block and voting district geography from the Census Bureau, the Board will have an opportunity during a fourth and final phase to determine if precinct alterations should be recommended to the counties in order to comply with G.S. § 163A-1071(b)(1) (effective January 1, 2020). *Id.*

Now, a month away from the deadline to report voting districts to the Census Bureau, the Board seeks to rush through phases one, two, and three that were meant to be implemented over years, not weeks, without pause to consider the deleterious effect on voters and election administration at the local level. The Board has missed nearly all of the deadlines set forth in SB 667 and any attempt to overhaul the precinct and voting district lines at this late stage is not only ill-considered, but it is harmful to voters. By combining the voting district redraw phase and the precinct boundary alterations phase all within a truncated timeframe, the Board leaves little room for county boards to carefully consider what is best for the voters in their counties.

Based on our conversations with Board staff and local election officials, it seems clear that the Board is not adequately considering the impact of this hasty redraw in the broader context of the 2020 election – a major presidential election in which millions of North Carolina voters will, if not enjoined by a court, encounter a strict photo ID law and more limited early voting sites and

weekend hours than in previous presidential elections due to the restrictive schedule mandated by Session Law 2018-112.¹

Moreover, it is clear to us that this rushed process has resulted in mass miscommunication between Board staff and county board staff and members. In response to queries from Board staff, many local election officials rated some buildings as *potentially* “viable” polling places, even though they did not believe those sites would actually serve the best interests of their community as voting locations on Election Day. Local election officials continue to misunderstand their ability to assert their rights under North Carolina law to be the primary driver in determining precinct/VTD boundaries in their counties. Instead, we have reason to fear that too many counties will defer to the Board’s algorithmic determination of new precinct maps, based on theoretically viable, not realistic or desirable precinct boundaries. Precinct boundary determination should be driven by local knowledge, not computer applications based on misunderstandings and inaccurate information. Such unjustified deference to the Board’s ill-conceived and rushed process will result in moving many more voters into different precincts before the 2020 elections than is necessary. That unnecessary change will affect voters’ experience next year and could impose significant financial burdens on the county boards, leading them to, perhaps, struggle even more to offer fulsome early voting plans.

As one specific example of the harmful consequences of changing a voter’s precinct shortly before a presidential election, we recognize that out-of-precinct (OOP) provisional ballots should offer a safety net for voters at the wrong precinct’s polling place however, our experience conducting nonpartisan Election Protection indicates that OOP provisional ballots are frequently not offered affirmatively by poll workers, and are often refused or discouraged by precinct officials when requested by voters.² Instead voters are turned away, even late in the day, often without any information about where to find their correct precinct. By needlessly moving voters into new precincts, increasing the likelihood that voters present to vote at the incorrect precinct and are not properly offered an OOP ballot, the Board is creating the environment for significant voter disenfranchisement. Further, given North Carolina’s recent history of rapidly changing election laws, we believe it is likely that voters and election administrators will face additional, unforeseen changes and challenges in 2020, adding more strain to an already overburdened system. Undertaking a statewide precinct redraw under the conditions proposed here, in such a rushed fashion, is a recipe for disaster.

Compliance with SB 667

Due to inaction over the past three years, the Board has failed to meet the deadlines set forth in SB 667. But the Board does not need to rush a combined voting district and voting precinct overhaul in order to comply with SB 667 or to receive accurate data from the Census Bureau following the 2020 Census.

¹ Robust early voting plans have the potential to offset any negative impact caused by the precinct changes. However, based on our analysis of the impact of SL 2018-112 in the 2018 cycle, we expect fewer Early Voting sites to be available to North Carolina voters, particularly those in rural areas, with fewer weekend hours offered.

² https://democracync.org/wp-content/uploads/2018/01/PostElectionReport_DemNC_web.pdf

SB 667 reads, “The Executive Director of the State Board of Elections shall report to the Bureau of the Census this State's voting precincts as of January 1, 2018, to be used in the 2020 Census as voting districts.” 2016 N.C. Sess. Laws 109, s. 7.(a), codified N.C. GEN. STAT. § 163A-1065(b). Thus, according to the plain meaning of the statute, the Board must submit a map of whatever the voting precincts were as of January 1, 2018 and it must align with census geography. Any attempt to submit voting precinct maps created after that date would be in violation of the statute.

In addition, by conflating what is required by SB 667 *before* May 31, 2019, for the Census Bureau and *after* January 1, 2020, for the goal of precinct uniformity, the Board is exceeding what is required by that statute and is overstepping its limited authority to dictate voting precincts boundaries.

Authority to Make Changes to Precinct Boundaries

In an attempt to rush through the voting district redraw process, the Board also seeks to impose voting precinct changes on county boards of elections without the statutory authority to do so. G.S. § 163A-1071 explicitly grants the *county boards of election the authority to make changes to precinct boundaries* upon approval of the Executive Director of the State Board. The statute allows the State Board to set a uniform standard for precincts that counties are required to follow, but nowhere does it grant the Board the authority to impose precinct changes on the counties. That authority to set uniform standards, however, does not seem to be what is even implicated in the current process, since our understanding is that the precinct maps that the Board intends to provide to the counties are derived using county-specific metrics and standards, rather than any uniform statewide standard. As such, we believe the Board would be exceeding its statutory authority by any attempt to impose precinct maps on the counties that are drawn based on recently developed algorithms. The fact that some counties may try to negotiate changes to the Board-proposed precinct maps, if they understand they have that authority, does not mitigate the statutory violation, particularly in light of the incredibly compressed timeline in which the Board apparently intends to conduct this process.

Nor does SB 667, apart from G.S. § 163A-1071, grant the Board the authority to impose precinct changes. SB 667 directs the county boards of election, on or before November 1, 2017, to report any changes to precinct boundaries, but that is distinct from granting the Board the authority to make precinct changes, particularly so far after the stated deadline.

SB 667 goes on to reinforce the Board's role as a facilitator in making changes to precinct boundaries. It instructs the Board to (1) develop criteria for the county boards of elections to use in developing proposed precinct boundaries, (2) notify the county boards of the requirement to submit proposed changes to the Board before November 1, 2017, and (3) facilitate the county boards in developing proposed boundary changes. In sum, SB 667 sect. 7(d) simply restates the requirements for making changes to precincts as laid out in G.S. § 163A-1071. Nowhere in SB 667 does the General Assembly hand over the pen to the Board to redraw precinct boundaries, especially on the eve of a major election. Without an express grant of authority from the General Assembly, the Board cannot impose changes to voting precincts.

Recommendations

We ask the Board to halt its attempts to impose drastic changes to voting precincts on counties and instead allow the county boards to engage in a more fulsome process for adjusting voting precinct boundaries. Specifically, we make two recommendations:

1. Counties should have the option, per their statutory authority, to submit a snapshot of their 2018 precinct boundaries in time for the May 31 deadline and, with technical support, the counties should be allowed to align their current precincts to census geography, which requires only minor alterations.
2. The Board should delay any efforts to significantly adjust precinct boundaries, as the current rushed process now strives to do, until after the return of the 2020 census data. The Board would then have the time to craft a set of carefully considered standards for adjusting precincts, as authorized by the provisions of G.S. § 163A-1071 that become effective after January 1, 2020. County boards of elections can then work with State Board to make changes consistent with those standards. This would also allow for voters and advocates in each county to play a meaningful role in this process.

Please do not hesitate to contact us if you have any questions.

Sincerely,

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